

# **Case Law Supplement for Alabama Probate Judges**

## **Adoption Law**

**Alabama Law Institute**

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## **Adult Adoption**

Evelyn Hays v. Mavis Hays,  
946 So. 2d 867 (Ala. Civ. App. 2006).

A stepparent cannot adopt a consenting adult stepchild under Ala. Code § 26-10A-6(2)(c) after the death of the spouse who was the stepchild's parent, as the death of the spouse extinguishes the stepparent-stepchild relationship for the purposes of this statute.

## **Consent**

J.L.P. v. L.A.M.,  
41 So.3d 770 (Ala. Civ. App. 2008).

A presumed father's failure to file with the putative father registry did not alter his right to object to the adoption of his child by the child's stepfather under Ala. Code § 26-10A-7.

Ex parte F.P. and R.P.,  
857 So. 2d 125 (Ala. 2003).

Under Ala. Code § 26-10A-9, a father did not abandon his child based on his failure to provide support or seek visitation because in petitioning for adoption the adoptive parents assumed support of the child and because their refusal to allow the father contact with his child relieved him of the responsibility to pursue visitation. Under these facts, termination of his parental rights was not justified.

Ex parte J.W.B. and K.E.M.B.,  
933 So. 2d 1081 (Ala. 2005).

This case distinguished Ex parte F.P., finding that a father did abandon his child under Ala. Code § 26-10A-9 when he was not denied access to the child, yet still did not attempt to visit the child in the three weeks between birth and adoption. The father also failed to file with the Putative Father Registry and only initiated legal proceedings once he had been served with notice of the adoption. Under these facts, the Court upheld the trial court's judgment in favor of the adoptive parents.

## **Foster Parents**

K.P. and C.P. v. G.C. and J.C.,  
870 So. 2d 751 (Ala. Civ. App. 2003).

When two sets of foster parents filed competing petitions to adopt children, evidence that one set of parents had financial difficulties and provided financial support to another child was sufficient to establish that the other set of parents could provide a more suitable home for the children.

## **Hearing**

In re Adoption of F.I.T.,  
43 So. 3d 621 (Ala. Civ. App. 2010).

Under Ala. Code § 26-10A-25, the probate court may not dismiss a petition for adoption prior to a hearing due to the court's own concerns that it lacked personal jurisdiction and findings in the post-placement investigation that DHR believed the petitioning adoptive father had committed an act of child abuse. While the court may raise the jurisdictional issue itself and may consider evidence from the investigation, both matters should first be addressed at the statutorily prescribed dispositional hearing.

## **Jurisdiction**

R.L. v. J.E.R.,  
69 So. 3d 898 (Ala. Civ. App. 2011).

Under the Uniform Child Custody Jurisdiction and Enforcement Act, Alabama's probate courts lacked the jurisdiction to terminate a mother's rights because Alabama was not the child's "home state." Though Alabama still could have exercised jurisdiction if 1) Georgia declined jurisdiction, 2) the child and at least one acting parent had significant connections with Alabama, and 3) substantial evidence concerning the child's care, protection, training, and personal relationships was available for the Alabama court's review, these requirements were not met.

Note: The UCCJEA does not ordinarily apply in adoption proceedings, but applied here because the adoption was connected with the separate custody matter of terminating the biological mother's parental rights.

D.B. and T.B. v. M.A.,  
975 So. 2d 927 (Ala. Civ. App. 2006).

Under the Parental Kidnapping Prevention Act (20 U.S.C. § 1738A), Alabama lacks jurisdiction in custody proceedings pertaining to a child whose "home state" is currently exercising jurisdiction in existing custody or visitation proceedings. The "home state" is one where a child has, immediately preceding the time in question, lived with an acting parent for 6 months or from birth if younger than 6 months, notwithstanding any temporary absences. However, a state may exercise such "home state" jurisdiction within 6 months of the child's removal from the state if the removal was made by a custody contestant and another contestant continues to reside within the state.

## **Notice**

M.M. v. D.P.,  
10 So. 3d 605 (Ala. Civ. App. 2008).

The probate court may not grant an adoption of a child without a waiver of notice or consent from a father listed on the child's birth certificate, as Ala. Code § 26-10A-7(a)(3)(d) gives a presumed father an unqualified right to object to the child's adoption, even absent his filing with the Putative Father Registry.

## **Post-Judgment Motions**

J.B.M. v. J.C.M.,  
142 So. 3d 676 (Ala. Civ. App. 2013).

The rule barring a successive post-judgment motion under Rule 60(b) of the Alabama Rules of Civil Procedure does not apply when the subsequent motion raises new grounds for setting aside the judgment.

## **Transfer**

Ex parte A.M.P.,  
997 So. 2d 1008 (Ala. 2008).

Four different provisions address the transfer of adoption cases from probate court:

- 1) Under Ala. Code § 12-12-35, upon motion by one of the parties, adoption proceedings may be transferred to district court at the probate court's discretion.
- 2) Under Ala. Code § 26-10A-21, when the probate court would stay an adoption proceeding pending a custody action in another court in the state, the probate court, at its discretion, may consolidate the adoption and custody proceedings, transferring both.
- 3) Under Ala. Code § 26-10A-24, the probate court may, at its discretion, transfer a contested adoption hearing to juvenile court. However, once the contested hearing and its issues have been resolved, the case would be remanded to the probate court for further action.
- 4) Under Ala. Code § 26-10A-3, when a party's consent required for an adoption is not obtained, the case must be transferred to juvenile court for the limited purpose of adjudicating the termination of the party's parental rights. Again, however, following that limited determination, the case would be remanded to the probate court.

## **Visitation**

B.C.M. v. H.E.C.,  
907 So. 2d 445 (Ala. Civ. App. 2005).

When terminating parental rights, a court cannot reserve visitation rights to the terminated parent.